



FOREST CONSERVATION FEE IN LIEU POLICY



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Description

Briefing to request Planning Board action on a policy update regarding fee in lieu for forest conservation mitigation requirements.

Summary

- Develop a policy to address outstanding approvals that require the purchase of mitigation bank credits.
- Montgomery County currently does not have any available mitigation banks due to the change in State Law disallowing the use of existing forest for mitigation banks.

Discussion

As you are aware, the State Legislation that changed the Forest Conservation Law last year has eliminated our ability to approve the creation of Forest Conservation mitigation banks with existing forest. Since that change occurred, the standard Forest Conservation Plan condition in Planning Board resolutions requiring mitigation has stated that mitigation can occur via a fee in lieu payment if a mitigation bank is not available. This has worked well and enabled applications to move forward as mitigation bank availability changes.

We currently do not have any mitigation banks left in the County. There are a few outstanding applications that were approved prior to the legislative change that contain old conditions that do not enable the flexibility to make the fee in lieu payment. These conditions typically state something similar to the following: "The Applicant must record a certificate of compliance for the purchase of off-site mitigation credit from an approved forest mitigation bank in the land records prior to any clearing or grading on site." This condition language creates a problem without any available mitigation banks.

We are asking the Board to adopt a policy that would enable applications to utilize the fee in lieu fund for Forest Conservation mitigation requirements if there are no banks available in the County. This is in keeping with what the Forest Conservation Law requires. Section 22A-12(g) outlines the requirements for utilization of fee in lieu. Specifically it states:

A person may make an in lieu fee payment to the forest conservation fund only if the person satisfactorily demonstrates that:

(1) (A) the requirements for reforestation or afforestation on-site or off-site cannot reasonably be accomplished;

(B) appropriate credits generated by a forest mitigation bank in the same watershed within the County are not available; and

(C) appropriate credits generated by a forest mitigation bank in the County are not available.

Allowing applications to move forward and meet the forest conservation mitigation requirements by paying a fee in lieu when no mitigation banks are available keeps projects moving and meets the requirements of the Forest Conservation Law. We are asking the Planning Board to allow applications that currently have conditions that limit their mitigation requirements just to purchasing Forest Conservation mitigation bank credits to move forward with paying a fee in lieu to meet their requirements without having to come back to the Planning Board for an amendment to change the condition. We believe this meets the Forest Conservation Law requirements and prevents unnecessary delay for the applicants.

Conclusion

In conclusion, Staff recommends that the Planning Board adopt a policy to allow Forest Conservation mitigation conditions to be met through the payment of fee in lieu when no mitigation banks are available in the County.